

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
SOUTHERN DIVISION  
Civil Action No. 7:15-CV-0038-BR

IAN S. GOTTLIEB	)	
As BIOLOGICAL FATHER and	)	
NEXT FRIEND OF GG AND JG,	)	
	)	
Petitioner,	)	<b>STATE RESPONDENTS'</b>
	)	<b>MOTION TO DISMISS</b>
v.	)	
	)	<b>Pursuant to Fed. R. Civ. P. 12(b)(1) and (6)</b>
ERIC SCHNEIDERMAN, AG of	)	
NY STATE, HON. ELLEN	)	
GESMER, SUPREME COURT OF	)	
NEW YORK COUNTY JUSTICE,	)	
ERICA F. GOTTLIEB,	)	
	)	
	)	
Respondents.	)	

**NOW COME** State Respondents, the Honorable Ellen Gesmer, a Justice of the Supreme Court of the State of New York, New York County, and Eric T. Schneiderman, Attorney General of the State of New York, each in their official capacities, by and through the undersigned counsel, and move this Court to dismiss this action with prejudice pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure. State Respondents' Motion to Dismiss Petitioner's Petition for a Writ of Habeas Corpus and Petition for a Declaratory Judgment Pursuant to 28 U.S.C. §§ 2201, 2202 should be granted on the following grounds:

1. The Petition for a Writ of Habeas Corpus is subject to dismissal pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure for lack of subject matter jurisdiction, as neither Petitioner nor his children are "in custody" as required by 28 U.S.C. § 2254, and Petitioner seeks habeas corpus relief from child custody determinations made by New York State Supreme Court.

2. The Petition for a Writ of Habeas Corpus is subject to dismissal as to all claims made by Petitioner on behalf of his children because Petitioner, a non-attorney, cannot represent his children.

3. The Petition for a Writ of Habeas Corpus is subject to dismissal pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure for lack of subject matter jurisdiction, as Petitioner failed to exhaust all available state judicial remedies as required by 28 U.S.C. § 2254(b)(1)(A) prior to seeking habeas relief from this Court.

4. The Petition for Declaratory Judgment Pursuant to 28 U.S.C. §§ 2201, 2202 is subject to dismissal pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure for lack of subject matter jurisdiction, as this Court does not have original jurisdiction over Petitioner's purported claims, the *Rooker-Feldman* doctrine bars this Court's review of the New York State Supreme Court's determinations, the State Respondents are immune from suit under the Eleventh Amendment, and Justice Gesmer is protected by judicial immunity.

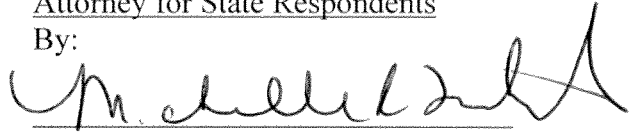
5. The Petition for Declaratory Judgment Pursuant to 28 U.S.C. §§ 2201, 2202 is subject to dismissal pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure for failure to state a claim upon which relief may be granted as to all claims against Attorney General Schneiderman, as Petitioner has not stated any facts that Attorney General Schneiderman has a connection to the underlying proceeding in New York State Supreme Court.

**WHEREFORE**, State Respondents move this Court for an order dismissing all of Petitioner's claims, with prejudice, pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure.

Respectfully submitted, this the 28th day of August, 2015.

ERIC T. SCHNEIDERMAN  
Attorney General of the  
State of New York  
Attorney for State Respondents

By:

A handwritten signature in black ink, appearing to read 'Michelle R. Lambert', written over a horizontal line.

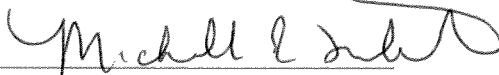
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## **CERTIFICATE OF FILING AND SERVICE**

I hereby certify that on August 28, 2015, I electronically filed the foregoing STATE RESPONDENTS' MOTION TO DISMISS on behalf of the Honorable Ellen Gesmer, a Justice of the New York State Supreme Court, New York County, and Eric T. Schneiderman, Attorney General of the State of New York, with the Clerk of Court using the CM/ECF system and served a copy on the Pro Se party by depositing a copy in the United States Mail addressed as follows:

**Ian S. Gottlieb**  
**796 Washington Acres Road**  
**Hampstead, NC 28443**  
*Pro se*

ERIC T. SCHNEIDERMAN  
Attorney General of the State of New York

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